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Nos. 02-241 and 02-516

In The
Supreme Court of the United States

BARBARA GRUTTER,

Petitioner,

v.

LEE BOLLINGER, JEFFREY LEHMAN, DENNIS SHIELDS, AND THE BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,

Respondents.

JENNIFER GRATZ AND PATRICK HAMACHER,

Petitioners,

v.

LEE BOLLINGER, JAMES J. DUDERSTADT, AND THE BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND BRIEF OF EXXON MOBIL CORPORATION AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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MOTION FOR LEAVE TO FILE OUT OF TIME *AMICUS CURIAE* BRIEF

Exxon Mobil Corporation, by counsel and pursuant to Rule 37, moves for leave to file out of time *amicus curiae* brief in these cases.

Respectfully submitted,

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INTEREST OF THE *AMICUS CURIAE*[1]

Exxon Mobil Corporation (ExxonMobil) is the world's leading energy, petrochemical, and technology company. Headquartered in Irving, Texas, it does business in 200 countries and territories and employs nearly 95,000 people, one-third of whom work in the United States.

Attracting and retaining a talented and diverse workforce is critical to ExxonMobil's continued success, both at home and abroad. ExxonMobil's recruitment process is global and competitive. Each year, ExxonMobil recruits thousands of employees from hundreds of universities around the globe – each represents a unique culture, nationality, and background. By recruiting worldwide, ExxonMobil gains essential local knowledge and a range of perspectives to help achieve today's business goals and find tomorrow's leaders of its global operations. ExxonMobil has thus included workforce diversity among its key, long-term business objectives, and it has implemented strategies to achieve diversity in cultural experience, race, ethnicity, gender, and other characteristics. These strategies are many and varied. They include educational, community outreach, and mentoring programs; scholarships and other financial support; and internal equal employment opportunity policies, to name just a few. These efforts have done much to create a workplace that is inclusive, comfortable, and reflective of the multicultural communities in which ExxonMobil does business.

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[1] All parties have consented to the filing of this *amicus curiae* brief. No portion of the brief was authored by counsel for a party. No person or entity other than the *amicus* signing this brief or their counsel made a monetary contribution to the preparation or submission of the brief.

ExxonMobil is proud of its achievements with respect to workforce diversity, but it also recognizes the need to improve, not simply maintain, what it has done. Accordingly, one key component of ExxonMobil's ongoing strategy involves recruiting employees from premier colleges and universities, on a global basis, that offer a broad, well-educated, and heterogeneous talent pool. The University of Michigan is one such school. ExxonMobil uses neither a point system nor set-asides in employment decisions. While the University of Michigan's admissions practices may not be lawful, we believe that this Court should not issue a broad decision barring consideration of race entirely in college admission decisions.

SUMMARY OF THE ARGUMENT

A diverse workforce is essential to the success of global companies like ExxonMobil, and student body diversity at colleges and universities, like the University of Michigan, is critical to ensuring that companies can meet their needs for workforce diversity. Although ExxonMobil takes no position on the particular admissions practices at issue in these cases, it believes that colleges and universities should be able to assemble their student bodies with an eye toward diversity so as not to hinder ExxonMobil's efforts – or the efforts of other American companies – to build the most competitive workforce. Moreover, regardless of the outcome of these cases, ExxonMobil urges the Court to structure its decision so that legitimate diversity initiatives and programs in place at ExxonMobil and other global companies are left undisturbed.

ARGUMENT

I. A diverse workforce is essential to ExxonMobil and other global businesses.

ExxonMobil, like many American companies today, is a truly global business with a highly diverse workforce. Two-thirds of ExxonMobil's operations and employees are located outside of the United States. Within the United States, 30% of ExxonMobil's employees are minorities.

In ExxonMobil's experience, employing a diverse workforce is essential to a company's success in the global marketplace. ExxonMobil understands diversity to mean a commitment to equal opportunity for everyone and a workplace free from any form of harassment or discrimination. Operating effectively in the global marketplace requires an understanding of the many different environments in which a company conducts business, and a diverse workforce that has experience with other cultures facilitates such an understanding. As CEO and Chairman Lee Raymond has stated in a letter to employees,

> Having a workforce that is as diverse as your business is a key competitive advantage. Our success is a direct reflection of the quality of our employees. We strive to attract the best people and to provide them the best career opportunities in our industry. In doing so, we've built a diverse global workforce that is focused on producing superior business results.[3]

[3] Letter from Lee Raymond to all ExxonMobil employees, *available at* http://www.prod.exxonmobil.com/careers/whatcan05_main.html.

Additionally, a diverse workforce creates a competitive advantage by allowing a business to leverage the diverse perspectives of its employees to improve decision-making and increase productivity. As one commentator has observed, "[T]here has come a uniform recognition by top management that diversity adds a significantly valuable dimension to problem-solving and decision-making, and therefore that diverse groups possess important advantages over homogeneous groups as units of creative and competitive productivity." Robert L. Lattimer, *The Case for Diversity in Global Business, and the Impact of Diversity on Team Performance*, COMPETITIVENESS REVIEW, Jan. 1, 1998, at 317.

Student body diversity at the University of Michigan and other institutions of higher education is critical to ensuring that global businesses like ExxonMobil are able to meet their needs for workforce diversity.[3] Not only does an institution with a culturally diverse student body produce graduates possessing the variety of perspectives that ExxonMobil views as paramount to its success as a global business, but all individuals educated at such an institution benefit from exposure to students of widely diverse backgrounds – and this exposure, in turn, benefits their employers. As Justice Powell aptly recognized, "[I]t is not too much to say that the 'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples." *Regents of the Univ. of Cal. v. Bakke*, 438 U.S.

[3] In assembling its workforce, ExxonMobil recruits at the University of Michigan and other universities, and it currently employs about 150 Michigan graduates in the United States.

265, 313 (1978) (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967)).[4]

Indeed, for these very reasons, ExxonMobil is committed to ensuring that its workforce is currently, and continues to be, diverse. ExxonMobil commits substantial resources to supporting various organizations working to diversify the overall student bodies of higher-education institutions. For example, in the United States, ExxonMobil was one of the first contributors to the United Negro College Fund when it was founded in 1944, and it has contributed significantly to the fund every year since. It also helped organize, and is the largest contributor to, the National Action Council for Minorities in Engineering. In fact, between these two organizations, ExxonMobil has contributed almost $20 million. Today, it gives over $5 million annually to minority projects, a portion of which goes to education programs aimed at increasing the number of minorities graduating with technical degrees.

Additionally, ExxonMobil focuses much of its recruitment efforts on top universities with large minority populations. According to the rankings compiled by the Engineering Workforce Commission of the American Association of Engineering Societies, ExxonMobil actively

[4] Patricia Gurin, University of Michigan professor of psychology and women's studies, also has determined from her empirical research that "[s]tudents educated in diverse settings are more motivated and better able to participate in an increasingly heterogeneous and complex democracy." Patricia Gurin, *Reports Submitted on Behalf of the University of Michigan: The Compelling Need for Diversity in Higher Education*, 5 MICH. J. RACE & LAW 363, 365 (1999) (cited with approval in *Grutter v. Bollinger*, 288 F.3d 732, 760 (6th Cir. 2002) (Clay, J., concurring), *cert. granted*, 123 S. Ct. 617 (2002)).

recruits from 64% of the recognized top 55 schools for all women and minorities. And the fact that the number of minority and women employees in ExxonMobil's key professional and managerial positions is increasing *despite* a decline in its overall employment levels speaks volumes about the success of these efforts towards ExxonMobil's long-term business strategy of building and maintaining a diverse, talented workforce.

Although ExxonMobil takes no position on the constitutionality of the particular admissions policies of the University of Michigan and its law school, ExxonMobil believes that a ruling that institutions of higher education cannot consider race or ethnicity as a factor in assembling their student bodies at all would hamper ExxonMobil's efforts – and the efforts of other American companies – to assemble the most productive and competitive workforce. In fact, such a ruling would present a particular challenge to ExxonMobil and other companies that draw their human resources largely from scientific, engineering, and technical fields. Minorities and women have historically been underrepresented in those areas, and invalidating all efforts directed toward increasing enrollment by minorities would exacerbate that concern.[5]

[5] Recognizing minority underrepresentation in these areas, Congress in 1998 created the Commission on the Advancement of Women and Minorities in Science, Engineering, and Technology Development (CAWMSET). The Commission's mandate was to "research and recommend ways to improve the recruitment, retention, and representation" of these groups. CAWMSET Home Page, *at* http://www.nsf.gov/od/cawmset/start.htm. "Commission exploration of the status of these underrepresented populations in SET has reaffirmed the nation's absolute economic and social imperative to ensure that all

(Continued on following page)

II. This Court's decision should not disrupt legitimate diversity programs.

Many American corporations, like ExxonMobil, have devoted considerable financial and other resources to create and sustain a diverse workforce, the type of workforce that is essential to successful participation in the global marketplace. These extensive efforts are ingrained in the corporate culture of ExxonMobil, as well as other American companies that have operations and customers around the world.

As part of its long-term business strategy, ExxonMobil continually has striven to attract employees from the broadest possible and most diverse talent pool in order to develop and retain a premier workforce. As a leading technology company that draws resources primarily from science, engineering, and technical disciplines, ExxonMobil contributes to scholarship funds at various colleges and universities across the country to expand the pool of minorities pursuing science, engineering, and technical degrees. The company also is actively engaged in partnerships with minority organizations and groups, such as the National Black MBA Association, the Society of Hispanic Professional Engineers, the National Society of Black Engineers, the American Indian Science and Engineering Society, and the Consortium for Graduate Study in Management, to support the recruitment and retention of minorities.

U.S. citizens enjoy full participation at all levels of SET education and the SET workforce." *Id.*

Regardless of the outcome of these cases, ExxonMobil urges the Court not to disturb legitimate programs and diversity initiatives in which ExxonMobil and other American businesses engage. In ExxonMobil's experience, these programs and initiatives necessarily promote the acquisition and retention of a diverse workforce whose members have the cross-cultural competence necessary for effective performance in the global marketplace.

One of ExxonMobil's efforts involves a continuing review of, and sensitivity to, the career progress and opportunities for high-performing minority employees. This initiative requires tautologically that race be considered, yet it does not confer an advantage on an employee because of her race; rather, that employee must still compete head to head with her colleagues. ExxonMobil respectfully submits that a focus on the development of high-performing minority employees – without discriminating in their favor once they have been identified – is a sound and important policy that must not be threatened by a decision cast in broad strokes by the Court.

Well-educated employees with diverse backgrounds, who are emerging as the business leaders of the twenty-first century, are essential to maintain America's competitiveness in an increasingly diverse global economy. A diverse workforce not only generates varied perspectives, which improve decision-making, increase productivity, and help companies understand the different environments in which business is conducted today, but also contributes to a positive work environment and

decreasing incidents of discrimination.[6] It is therefore critical for American businesses to be able to continue to foster a climate that encourages and facilitates further development of diversity in their workforces and throughout the country.

CONCLUSION

ExxonMobil must have a qualified, well-educated, diverse workforce to succeed in the global marketplace. Through various legitimate activities, programs, and diversity initiatives, ExxonMobil and other global companies have made great strides in recruiting and retaining employees with varied cultural backgrounds, many of whom have come from colleges and universities that have diverse student bodies. Much has been done; much remains to be done. ExxonMobil thus urges the Court not to disturb legitimate programs and diversity initiatives that help promote essential needs of American businesses in

[6] *See generally* THE CONFERENCE BOARD, DIVERSITY: AN IMPERATIVE FOR BUSINESS SUCCESS (1999).

the ever growing multi-cultural marketplace of the twenty-first century.

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